



JACK V. SMITH
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APR 23 2008

In re Application of
Jack V. Smith
Application No. 09/898,958
Filed: July 3, 2001
Title of Invention: **INFLATABLE BOX**

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: **DECISION ON PETITION**
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This is a decision on the renewed petition filed March 25, 2008 under 37 CFR 1.137(b)¹ to revive the above-identified application.

The petition under 37 CFR 1.137 (b) is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned as a result of petitioner's failure to file a proper appeal brief. A Notification of Non-Compliant Appeal Brief (37 CFR 41.37) was mailed September 29, 2005 setting the longer of one month or 30 days for reply. No response having been filed, a Notice of Abandonment was mailed July 6, 2006. On November 13, 2007 a petition to revive was filed with a Request for Continued Examination (RCE) requesting that the previously filed amendment be used as the submission required under 37 CFR 1.114. As well, additional independent claims were submitted. However, the credit card used to pay the fees associated with the instant petition, RCE and independent claims was deficient by \$20. Since no authorizations for debiting a deposit account for any deficiencies had been granted, the petition was not grantable and a decision dismissing the petition was mailed February 28, 2008.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Comes now petitioner with the instant renewed petition noting that PTO Form 2038 was to be enclosed to pay the balance of the fees due.

No such form has been found amongst the papers included with the renewed petition. In fact, the petition filed March 25, 2008 is entitled "Request for Reconsideration of Petition Under 37 CFR 1.47." At no time was the petition that was dismissed February 28, 2008 filed under 37 CFR 1.47.

In view thereof and in the absence of payment of the \$20, previously deficient, for the payment of independent claims, this petition to revive is still not grantable.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (571) 273-8300
 ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink that reads "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions